A

Jurutera Daerah Jabatan Kerja Raya Melaka & Ors v Muhamad Syariman bin Abd Wahab

B

HIGH COURT (MELAKA) — CIVIL APPEAL NO MA-12BNCvC-6–05 OF 2021
MAIDZUARA MOHAMMED JC
18 JANUARY 2022

C

Tort — Negligence — Road accident — Whether trial court erred in holding defendants more blame-worthy for causing accident — Whether plaintiff and defendants were equally liable as plaintiff failed to observe safe speed given the poor condition of the road

D

The respondent sued the appellants in the sessions court for damages suffered when the motorcycle he was riding was involved in an accident on a stretch of road which at the material time was being maintained by the appellants or their employees/servants/agents. No other vehicle was involved in the accident. The trial court found the appellants 70% liable for the accident and assessed the damages payable to the respondent. In the instant appeal, the appellants' only complaint was with regard to the apportionment of 70% liability against them.

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Held, allowing the appeal and ruling that the parties were equally liable for the accident:

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(1) The sessions court failed to take into consideration the testimonies of PW1 (the police sergeant who investigated the accident) and PW2 (the independent eye-witness). PW1 testified that although no speed limit was specified for the stretch of road where the accident took place, the circumstances ideally required users of the road not to speed and to maintain a speed of between 40 and 60km per hour. PW2, who was a daily user of the road, testified that the condition of the road was not good and that there were potholes (see paras 12–14).

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(2) The trial court erred when it failed, or sufficiently failed, to take into account the respondent's admission that he was travelling at 60km per hour, which was the fastest speed advisable for that stretch of road. Given that he was a daily user of the road and that he was going downhill at the time and given the poor condition of the road, the respondent ought to have travelled at a slower speed so that he could have taken evasive action to avoid an accident, but he did not do so. The trial court therefore erred in holding the appellants 70% liable for the accident. On the facts of the case, it was more reasonable and appropriate to hold the parties 50:50 liable (see paras 15–17).

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I

A **[Bahasa Malaysia summary**

Responden menyaman perayu-perayu di mahkamah sesyen untuk ganti rugi yang dialami apabila motosikal yang ditunggangnya terlibat dalam kemalangan di jalan raya yang pada masa yang material sedang diselenggara oleh perayu atau pekerja/penjawat/ejen mereka. Tiada kenderaan lain terlibat dalam kemalangan tersebut. Mahkamah perbicaraan mendapati perayu 70% bertanggungjawab atas kemalangan tersebut dan menilai ganti rugi yang perlu dibayar kepada responden. Dalam rayuan semasa, satu-satunya aduan perayu adalah mengenai pembahagian 70% liabiliti terhadap mereka.

C **Diputuskan**, membenarkan rayuan dan memutuskan bahawa pihak-pihak bertanggungjawab secara bersama atas kemalangan

(1) Mahkamah sesyen gagal mengambil kira keterangan PW1 (sarjan polis yang menyiasat kemalangan tersebut) dan PW2 (saksi bebas). PW1 memberi keterangan bahawa walaupun tiada had laju dinyatakan untuk jalan raya di mana kemalangan tersebut berlaku, keadaan idealnya memerlukan pengguna jalan raya untuk tidak memecut dan mengekalkan kelajuan antara 40 dan 60km sejam. PW2 yang merupakan pengguna harian jalan tersebut memberi keterangan bahawa keadaan jalan tersebut tidak baik dan terdapat jalan berlubang (lihat perenggan 12–14).

(2) Mahkamah perbicaraan terkhilaf apabila ia gagal, atau secara secukupnya gagal, untuk mengambil kira pengakuan responden bahawa beliau bergerak dengan kelajuan 60km sejam, yang merupakan kelajuan terpantas yang dinasihatkan untuk jalan tersebut. Memandangkan beliau adalah pengguna jalan raya setiap hari dan ketika itu sedang menuruni bukit serta keadaan jalan yang teruk, responden sepatutnya memandu pada kelajuan yang lebih perlahan supaya beliau boleh mengambil tindakan mengelak untuk mengelakkan kemalangan, tetapi beliau tidak berbuat demikian. Oleh itu, mahkamah perbicaraan telah terkhilaf apabila meletakkan perayu 70% bertanggungjawab atas kemalangan tersebut. Mengenai fakta kes, adalah lebih munasabah dan wajar untuk mempertanggungjawabkan pihak-pihak secara 50:50 (lihat perenggan 15–17).]

Norafiah Saini (Melaka State Legal Advisor's Office) for the appellants.
Khalidah Khalil (AK Das & Assoc) for the respondent.

Maidzuara Mohammed JC:

[1] Enclosure 1 was an appeal by the appellants against the decision of the sessions court delivered on 20 April 2021.

[2] The appellants were the defendants before the sessions court while the respondent was the plaintiff before the sessions court. The appellants and the respondent will be referred to as the defendants and the plaintiff as they appeared before the sessions court.

PROCEEDINGS BEFORE THE SESSIONS COURT

[3] On 19 August 2017 at about 4.10pm, an accident occurred involving respondent's motorcycle registration MCM 1610. No other vehicle was involved.

[4] The location of accident was Jalan PBR 44 Kawasan Perindustrian Bukit Rambai Melaka ('stretch of road').

[5] The plaintiff's case was that the stretch of road in question was under maintenance by the D1, that D1 was employed by the D2 and that D3 was vicariously liable for the actions or omissions of the D1 and D2.

[6] After a trial, the sessions court's decision was to apportion liability on the basis of 70:30 between the defendants and the plaintiff.

DETERMINATION BY THE HIGH COURT

[7] This court reviewed the grounds of judgment by the sessions court.

[8] The reasons given by the sessions court for the 70:30 apportionment was that:

(a) SP3 (plaintiff) admitted that he often travelled on that stretch of road;

(b) the plaintiff was riding his motorcycle at 60km/j although the plaintiff knew of condition of the stretch of road; and

(c) SP2 — an eye witness, testified that the damage to that stretch of road had long been there.

[9] This court reminded itself that the sessions court had the audio and visual advantage with regard to the testimony of all the witnesses.

[10] This court also reminded itself that as an appellate court. This court ought to be mindful of the findings of facts by the sessions court.

[11] This court reviewed and carefully considered all material in the record of appeal including the notes of proceedings.

[12] This court found that the sessions court did not take into consideration the testimony by the witnesses set out below.

[13] The testimony of PW1 — the police sergeant who investigated the accident — who testified that:

> Untuk makluman, kawasan tersebut tiada had kelajuan yang ditunjukkan di kawasan tersebut.
>
> Jadi apabila kawasan tiada had laju apakah had laju minima bagi pihak Jabatan Penguatkuasaan ataupun pihak Polis menetapkan di situ?
>
> Untuk makluman pada kadar 40 km/j hingga 60km.
>
> ... kenderaan yang melalui jalan itu tidak boleh laju sebab apabila masuk ke simpang hendak masuk ke simpang seterusnya dia mesti memandu dalam keadaan yang perlahan, setuju?
>
> Setuju
>
> S: ... sekiranya seseorang itu melanggar lubang itu dan jatuh ianya tidak boleh menyebabkan kemalangan yang serius setuju atau tidak?
>
> Setuju.
>
> S: ... bukanlah lubang, tetapi hanya turapan jalan setuju atau pun tidak?
>
> Setuju.
>
> S: ... Plaintif ini memandu dengan laju di kawasan itu, setuju atau tidak?
>
> Tidak setuju.
>
> S: Kenapa?
>
> ... Kerana saya tidak berada di tempat kemalangan dan tidak pasti kadar kelajuan yang dibawa oleh motorsikal semasa kejadian.

[14] The testimony of SP2 — an independent eye witness — who testified that:

> Adakah Encik Izwan dan plaintiff Syariman ini menggunakan jalan PBR 44 itu secara kerap atau secara harian?
>
> Ya hari-hari pakai.
>
> En Izwan sedar ada kerosakan di jalan tersebut, ada lubang atau kerosakan di jalan tersebut, setuju?
>
> Ya. Setuju.

[15] Given the aforesaid, this court found that the sessions court erred when it failed to take into account or sufficiently take into account evidence which was available to the sessions court namely that:

(a) the weather on that day was 'baik';

(b) the plaintiff not only used the stretch of road often but in fact used it at least two times a day — to go to and come from his place of work every working day;

(c) the plaintiff was aware of the damage to the stretch of road;

(d) the photos of the stretch of road showed that there was ample space from the side of the road to the end of the damage to the road where the plaintiff could have travelled;

(e) the plaintiff was aware and at least could have observed the condition of the road and taken evasive measures eg slowed down. The plaintiff did not do so;

(f) although there is no designated speed limit for the stretch of road, the advisable speed limit was 40km/h to 60km/h. The plaintiff testified that he was traveling at 60 km/j. The speed at which the plaintiff was travelling was at the fastest speed advised for the stretch of road; and

(g) the stretch of road was downhill and the plaintiff ought to have travelled at a slower speed.

[16] This court found that the sessions court erred is apportioning liability on the basis of 70:30.

[17] Given the facts of the case, this court was of the view that liability on the basis of 50:50 was reasonable and appropriate.

[18] There was no appeal as to quantum by the plaintiff. Therefore, the award by the sessions court with regard to quantum on a 100% basis was maintained.

DECISION BY THE HIGH COURT

[19] On 9 December 2021, this court allowed the appeal and ordered that liability between the plaintiff and the defendants be apportioned on the basis of 50:50.

[20] On the same date, this court also ordered that costs shall be borne by each party

Appeal allowed and parties ruled equally liable for the accident.

Reported by Ashok Kumar